

**PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Roman MEYER *et al.*

Serial No.: 10/583,415

Filed: June 15, 2006

For: ENDOTOXIN DETECTION METHOD

Group Art Unit: 1645

Examiner: Not Yet Assigned

Atty. Dkt. No.: DEBE:067US

Confirmation No.: 6633

CERTIFICATE OF ELECTRONIC TRANSMISSION  
37 C.F.R. § 1.8

I hereby certify that this correspondence is being electronically filed with the United States Patent and Trademark Office via EFS-Web on the date below:

November 13, 2009  
Date

Steven L. Highlander

**PETITION UNDER 37 C.F.R. § 1.181 (A) TO WITHDRAW HOLDING OF  
ABANDONMENT BASED ON FAILURE TO RESPOND TO NOTIFICATION OF  
DEFECTIVE RESPONSE**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Applicants hereby petition under 37 C.F.R. § 1.181 (a) to request withdrawal of a holding of abandonment based on failure to respond to the Notification of Defective Response, mail date July 14, 2009. On September 28, 2009, Applicants received a Notification of Abandonment based on the failure to respond to the Notification of Defective Response, mail date July 14, 2009, in the above-referenced case. However, a Notification of Defective Response was never received by Applicants' representative. According to *Delgar v. Schuyler*, 172 U.S.P.Q. 513

(D.D.C. 1971) and MPEP 711.03 (c), Applicants' representative can provide a statement that fulfills the showing required to establish non-receipt of a Patent and Trademark Office communication. Such a statement is provided below.

A Notification of Abandonment was mailed on September 24, 2009 (the "Notification"). On or around September 28, 2009, the Notification was received and docketed by the docketing secretary for the law firm of Fulbright & Jaworski in Austin, Texas. The Notification was then forwarded to undersigned, the handling attorney and partner in charge for the prosecution of the present application. On September 29, 2009, the entire file of this case and docketing system was searched; attached is a declaration asserting these facts (Appendix A). A Notification of Defective Response was not found in the file. Also, a Notification of Defective Response was not docketed in this case. A copy of the executed Declaration by Deborah Hooper, Docketing Supervisor of Fulbright & Jaworski in Austin, Texas, stating that a Notification of Defective Response was never received and/or docketed for the present application is attached (Appendix B).


This office's practice with respect to communications from the Patent and Trademark Office is that communications go directly to the docketing secretary after being received in our mailroom. The docketing secretary opens the mail, docketed any deadlines necessitated by a PTO communication—including responses to Notification of Defective Response—and forwards the communication to a handling attorney or patent agent.

In view of the statement above that the Notification of Defective Response was not received by practitioners for this case and that a search of the file for the above-referenced application and of the docket confirm the non-receipt of the communication, Applicants'

representative respectfully requests the withdrawal of the holding of abandonment in this case for the failure to timely reply to the Notification of Defective Response.

This petition is believed timely filed as the Notification of Abandonment was mailed on September 24, 2009 and this petition is being filed less than two months after that date. No fee is believed due. However, if any fees is required for any reason relating to the enclosed materials the Commissioner is authorized to deduct said fees from or to Fulbright & Jaworski L.L.P. Deposit Account No. 50-1212/DEBE:067US.

Respectfully submitted,

  
Steven L. Highlander  
Reg. No. 37,642  
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.  
600 Congress Avenue, Suite 2400  
Austin, Texas 78701  
(512) 474-5201

Date: November 13, 2009

## **APPENDIX A**

**PATENT**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Roman MEYER *et al.*

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November 13, 2009  
Date

Steven L. Highlander

**DECLARATION OF STEVEN L. HIGHLANDER**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

I, Steven L. Highlander, hereby declare:


1. I am the handling attorney and partner in charge for the prosecution of the above-referenced case.
2. I received and reviewed the Notification of Abandonment for failure to respond to the Notification of Defective Response (date mailed July 14, 2009) on September 28, 2009.
3. Subsequently, I reviewed the entire file for this case for a Notification of Defective Response. I did not find one.

4. I also checked our docketing system and records through one of our docketers, who confirmed that our docketing system and records did not indicate we had received a Notification of Defective Response or docketed a response deadline.

6. It is my belief that our office did not receive a Notification of Defective Response with respect to the above-referenced case.

7. I hereby declare that all statements made of my own knowledge are true and all statements made on information are believed to be true and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

Respectfully submitted,

  
Steven L. Highlander  
Reg. No. 37,642  
Attorney for Applicants

FULBRIGHT & JAWORSKI L.L.P.  
600 Congress Avenue, Suite 2400  
Austin, Texas 78701  
(512) 474-5201

Date: November 13, 2009

## **APPENDIX B**

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

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Serial No.: 10/583,415

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**CERTIFICATE OF ELECTRONIC TRANSMISSION  
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November 13, 2009

Date

Steven L. Highlander

**DECLARATION OF DEBORAH HOOPER UNDER 37 C.F.R. 1.137(b)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Sir:

I, Deborah Hooper declare:

1. I am an adult resident of the State of Texas.
2. I am, and at all relevant times, Docketing Supervisor for Fulbright & Jaworski L.L.P., located in Austin, Texas.
3. I have checked the docketing records for mail received from the U.S. Patent Office between the days of July 15, 2009 and September 28, 2009.
4. Upon information and belief, a Notification of Defective Response for Serial Number 10/583,415, was not received by our docketing department which receives and docketed all correspondence from the U.S. Patent Office.



5. I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. I make the statements set forth above of my own personal knowledge, and, if called upon to do so, could testify competently thereto. I acknowledge that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. §1001) and may jeopardize the validity of the patent application and any corresponding patent.

Respectfully submitted,

By Deborah Hooper

Deborah Hooper, Docketing Supervisor  
Fulbright & Jaworski, LLP  
600 Congress Avenue, Suite 2400  
Austin, Texas 78701  
(512) 474 5201

Date: November 13, 2009